

Connie L. Chen (SBN 275649)  
Connie.Chen@jacksonlewis.com  
JACKSON LEWIS P.C.  
725 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5408  
Telephone: (213) 689-0404  
Facsimile: (213) 689-0430

Attorneys for Defendant  
**WALDÖRF=ASTORIA MANAGEMENT LLC**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANGELICA AMARO, an individual;  
MICHELLE BAKER, an individual;  
LAELA DUNCAN, an individual;  
INGRID SARDARIAN, an individual;  
AMY SINGH, an individual;  
SYDNEY SURRELL, an individual;

## Plaintiffs,

VS.

Waldorf=Astoria Management LLC  
operating as The Waldorf Astoria Beverly  
Hills; KEVIN B. Hair and Beauty, LLC;  
and DOES 1-25.

## Defendants.

**CASE NO.:**

[Los Angeles County Superior Court Case  
No. 23STCV29009]

**DEFENDANT'S NOTICE OF  
REMOVAL OF ACTION TO  
FEDERAL COURT PURSUANT TO 28  
U.S.C. §§ 1332, 1441**

[Filed concurrently with Civil Case Cover Sheet; Declarations of Connie Chen, James Smith and Lea Nissen, Corporate Disclosure Statement; Notice of Interested Parties; Notice of Related Cases; and Proof of Service]

Complaint Filed: November 27, 2023

111

111

111

111

1                   **TO THE CLERK OF THE U.S. DISTRICT COURT FOR THE CENTRAL**  
 2 **DISTRICT OF CALIFORNIA, ALL PARTIES, AND THEIR ATTORNEYS OF**  
 3 **RECORD:**

4                   PLEASE TAKE NOTICE that Defendant Waldorf=Astoria Management LLC  
 5 (“Defendant”) removes the above-entitled action to this Court from the Superior Court of  
 6 the State of California, County of Los Angeles pursuant to 28 U.S.C. § 1441. Defendant  
 7 invokes this Court’s original jurisdiction under 28 U.S.C. § 1332(d) (the Class Action  
 8 Fairness Act). Defendant submits this Notice of Removal without waiving any defenses  
 9 to the claims asserted by Plaintiffs Angelica Amaro, Michelle Baker, Laela Duncan,  
 10 Ingrid Sardarian, Amy Singh, and Sydney Surrell (“Plaintiffs”) and without conceding  
 11 that Plaintiffs have pled claims upon which relief can be granted. This removal is based  
 12 on the following grounds:

13                   **PROCEDURAL BACKGROUND.**

14                   1. On November 27, 2023, Plaintiffs filed an unverified Class Action Complaint  
 15 against Defendant in the Superior Court of the State of California for the County of Los  
 16 Angeles entitled *ANGELICA AMARO, et al. v. WALDORF=ASTORIA MANAGEMENT*  
 17 *LLC, et al.*, Case No. 23STCV29009, which sets forth the following 17 causes of action:  
 18 (1) willful misclassification; (2) failure to pay all wages; (3) willful failure to pay all wages  
 19 upon separation; (4) failure to authorize or permit rest breaks and meal periods; (5) failure  
 20 to provide paid sick leave; (6) willful failure to provide accurate wage statements; (7)  
 21 failure to provide workers’ compensation benefits; (8) failure to maintain written  
 22 commissions agreement; (9) unlawful retaliation; (10) failure to pay wages and fringe  
 23 benefits; (11) failure to reimburse employment related expenses; (12) making or authorizing  
 24 illegal deductions; (13) unlawful tip-sharing and confiscation of gratuities; (14) failure to  
 25 produce payroll records upon request; (15) unfair business acts and practices; (16) unjust  
 26 enrichment; and (17) civil penalties under the California Private Attorneys General Act  
 27 (“PAGA”) (the “Complaint”). A true and correct copy of the Summons, Complaint  
 28 (“Compl.”), Civil Case Cover Sheet and related case documents filed in the Los Angeles

1 Superior Court and served on Defendants is attached as **Exhibit A** to the Declaration of  
 2 Connie L. Chen (“Chen Decl.”), filed concurrently with this Notice of Removal. (Chen  
 3 Decl., ¶ 3.)

4       2. As stated in Paragraph 98 of the Complaint, Plaintiff seeks to represent a  
 5 proposed Class of:

6       [a]ll current and former hourly, non-exempt employees or misclassified independent  
 7 contractors who worked for Defendants and were not fully compensated for their  
 8 time worked over forty (40) hours per week at overtime rates during at least one  
 9 week and/or did not receive premium pay to which they were entitled for any missed  
 10 rest breaks and/or meal periods, and/or were not timely compensated for all time  
 11 worked or while on-call under Defendants’ control, and/or were not paid the  
 12 prevailing minimum wage due to uncompensated work, and/or were not provided  
 13 with itemized wage statements detailing the commissions earned per date and  
 14 service, and/or did not receive, or timely receive, all wages owed at separation of  
 15 their employment and/or threatened with or subjected to retaliation by Defendants  
 16 during the period beginning four years and 178 days before the filing of the initial  
 17 *Bolos* Complaint<sup>1</sup> and ending when notice to the Class is sent.

18 (“Putative Class Members”) (Compl. ¶ 98.)

19       3. On December 6, 2023, Hon. Carolyn B. Kuhl of the Los Angeles County  
 20 Superior Court issued an Initial Status Conference Order and Minute Order setting an  
 21 Initial Status Conference for February 1, 2024, which Plaintiff served on Defendants.  
 22 (Chen Decl., ¶ 4.) True and correct copies of these orders are included in **Exhibit A** to  
 23 the Chen Declaration. (*Id.*)

24       4. On December 6, 2023, Plaintiffs served the Summons and Complaint on  
 25 Defendant Waldorf=Astoria Management LLC. (*Id.* at ¶ 5.) A true and correct copy of the  
 26 Proof of Service is attached as **Exhibit B** to the Chen Decl. (*Id.*)

27       5. To date, there is no proof of service on file with the Los Angeles County  
 28 Superior Court as to Defendant Kevin B. Hair and Beauty, LLC. (*Id.* at ¶ 8.)

26       1 Plaintiffs are referring to the action entitled *Laurie Bolos, on behalf of herself and all*  
 27 *others similarly situated v. Grand Wailea A Waldorf Astoria Resort, et al.*, United States  
 28 District Court, District Court of Hawai’i Case No. 1:23-cv-00104-JMS-KJM filed on  
 February 23, 2023.

6. On January 4, 2024, Defendant Waldorf=Astoria Management LLC filed an Answer to the Complaint in Los Angeles County Superior Court. A true and correct copy of Defendant's Answer is attached to Chen Declaration as **Exhibit C.** (*Id.* at ¶ 6.)

7. As of the date of this filing, **Exhibits A-C** to the Chen Declaration constitute all of the pleadings that have been filed or served in this action, and no further proceedings have occurred in the state court. (*Id.* at ¶ 7.)

## **REMOVAL IS TIMELY**

8. This Notice of Removal has been filed within thirty (30) days after service of the Summons and Complaint upon Defendant. (*Id.* at ¶ 3, Ex. A.) Therefore, this removal has been timely filed pursuant to 28 U.S.C. § 1446(b). *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 354 (1999) (“[T]he defendant’s period for removal will be no less than 30 days from service, and in some categories, it will be more than 30 days from service, depending on when the complaint is received.”); *see also* California Code of Civil Procedure § 415.30(b).

## VENUE

9. This action was filed in the Superior Court in and for the County of Los Angeles. Thus, pursuant to 28 U.S.C. § 1441(a), Defendants are removing this action to the United States District Court for the Central District of California as the district “embracing the place where [the] action is pending.”

## **REMOVAL IS PROPER BASED ON THE CLASS ACTION FAIRNESS ACT**

10. Removal of this action is proper under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332 *et seq.* Section 4 of CAFA, 28 U.S.C. § 1332(d)(2), has been amended to read, in relevant part:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which – (A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

1       11. In addition, CAFA provides for jurisdiction in the district courts only where  
 2 the proposed class involves 100 or more members, or where the primary defendants are  
 3 not States, State officials, or other governmental entities. 28 U.S.C. § 1332(d)(5).

4       12. As set forth below, this is a civil action over which this Court has original  
 5 jurisdiction under 28 U.S.C. § 1332(d), in that it is a civil action filed as a class action  
 6 involving more than 100 members, the matter in controversy – based on the allegations in  
 7 the Complaint – exceeds the sum of \$5,000,000, exclusive of interest and costs, and at least  
 8 one plaintiff is a citizen of a state different from Defendant. *See* 28 U.S.C. §§ 1332(d) and  
 9 1453. Furthermore, none of the Defendants are a State, State official, or other governmental  
 10 entity.

11      **A. The Putative Class Contains More Than 100 Members.**

12      13. To qualify for original jurisdiction under CAFA the number of putative class  
 13 members encompassed by the proposed class action must number at least 100 members  
 14 in the aggregate. *See* 28 U.S.C. § 1332(d)(5)(b).

15      14. Here, Plaintiffs allege “[t]he number of members in the Class is believed to  
 16 exceed two hundred (200). (Compl., ¶ 99.) Defendant Waldorf=Astoria Management  
 17 LLC’s records identify at least approximately **786** Putative Class Members, as defined by  
 18 Plaintiffs in the Complaint. (Declaration of Lea Nissen (“Nissen Decl.”), ¶ 6; Compl.,  
 19 ¶ 98). Accordingly, the numerosity requirement for jurisdiction under CAFA is satisfied.

20      **B. None of the Named Defendants Are Government Entities.**

21      15. Neither Defendant is a State, a State official, or any other governmental  
 22 entity.

23      **C. All Served Defendants Consent to Removal**

24      16. To date, only Defendant Waldorf=Astoria Management LLC has been  
 25 served in this action. (Chen Decl., ¶¶ 3, 8.) Thus, all served defendants consent to  
 26 removal of this action to the United States District Court for the Central District of  
 27 California. 28 U.S.C. 1446(b)(2)(A).

1           **D. Minimal Diversity Is Satisfied Under CAFA.**

2           17. The standard for establishing diversity of citizenship under CAFA is different  
 3 than diversity jurisdiction under 28 U.S.C. § 1332(a)-(c). CAFA's diversity requirement is  
 4 satisfied when there is minimal diversity, *i.e.*, when at least one member of a class of  
 5 plaintiffs is a citizen of a state different from any named defendant. 28 U.S.C.  
 6 § 1332(d)(2)(A); *see also Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1116 (9th Cir.  
 7 2015); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv.*  
 8 *Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090-91 (9th Cir.  
 9 2010) (holding that to achieve its purposes, CAFA provides expanded original diversity  
 10 jurisdiction for class actions meeting the minimal diversity requirement set forth in 28  
 11 U.S.C. § 1332(d)(2)); *Bradford v. Bank of Am. Corp.*, No. CV 15-5201-GHK (JCx), 2015  
 12 U.S. Dist. LEXIS 120800, at \*13 (C.D. Cal. Sep. 10, 2015) (“[defendant] needed only to  
 13 establish that one plaintiff was a citizen of a different state from any one defendant at the  
 14 time of removal.”).

15           18. Citizenship of the parties is determined by their citizenship status at the  
 16 action's commencement. *See Mann v. City of Tucson*, 782 F.2d 790 (9th Cir. 1986).

17           19. For individuals, citizenship is determined by a person's domicile. *Lew v.*  
 18 *Moss*, 797 F.2d 747, 749 (9th Cir. 1986). “A person's domicile is her permanent home,  
 19 where she resides with the intention to remain or to which she intends to return.” *Kanter*  
 20 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

21           20. Plaintiff ANGELICA AMARO alleges she was, at the time of filing, a  
 22 resident of the State of Florida. (Compl. ¶ 15.) Accordingly, for purposes of removal  
 23 under CAFA, Plaintiff AMARO is a citizen of the State of Florida.

24           21. Plaintiff MICHELLE BAKER alleges she was, at the time of filing, a  
 25 resident of the State of Florida. (Compl. ¶ 16.) Accordingly, for purposes of removal  
 26 under CAFA, Plaintiff BAKER is a citizen of the State of Florida.

27           22. Plaintiff LAELA DUNCAN alleges she was, at the time of filing, a resident  
 28 of the State of California. (Compl. ¶ 17.) Accordingly, for purposes of removal under

1 CAFA, Plaintiff DUNCAN is a citizen of the State of California.

2 23. Plaintiff INGRID SARDARIAN alleges she was, at the time of filing, a  
 3 resident of the State of California. (Compl. ¶ 13.) Accordingly, for purposes of removal  
 4 under CAFA, Plaintiff SARDARIAN is a citizen of the State of California.

5 24. Plaintiff AMY SINGH alleges she was, at the time of filing, a resident of the  
 6 State of California. (Compl. ¶ 18.) Accordingly, for purposes of removal under CAFA,  
 7 Plaintiff SINGH is a citizen of the State of California.

8 25. Plaintiff SYDNEY SURRELL alleges she was, at the time of filing, a  
 9 resident of the State of California. (Compl. ¶ 19.) Accordingly, for purposes of removal  
 10 under CAFA, Plaintiff SURRELL is a citizen of the State of California.

11 26. For diversity purposes, a limited liability company is deemed to be a citizen  
 12 of any state in which any member of the company is a citizen. *See Johnson v. Columbia*  
 13 *Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

14 27. For diversity purposes, a corporation is considered a citizen of any state by  
 15 which it is incorporated and of the state where it has its principal place of business. (28  
 16 U.S.C. § 1332(c)(1)). With respect to ascertaining a corporation's principal place of  
 17 business, the United States Supreme Court has adopted the "nerve center test." *Hertz*  
 18 *Corp. v. Friend*, 559 U.S. 77, 80-81 (2010). Under the nerve center test, a corporation's  
 19 principal place of business is where a corporation's high-level officers direct, control and  
 20 coordinate the corporation's activities. *Id.* A corporation can only have one "nerve  
 21 center." *Id.* at 93-94. In evaluating where a corporation's "nerve center" is located,  
 22 courts will look to the center of overall direction, control, and coordination of the  
 23 company and will no longer weight corporate functions, assets, or revenues in each state.  
 24 *Id.*

25 28. Defendant Waldorf=Astoria Management LLC is duly formed under the  
 26 laws of the State of Delaware. (Declaration of James Smith ("Smith Decl."), ¶ 4.) At all  
 27 relevant times, Defendant Waldorf=Astoria Management LLC's headquarters, and thus  
 28 its principal place of business, has been in the Commonwealth of Virginia. (*Id.*)

1 Defendant Waldorf=Astoria Management LLC controls its operations from its McLean,  
 2 Virginia, headquarters, located at 7930 Jones Branch Drive, McLean, Virginia, 22102.  
 3 (Id.) Its main office and management functions are concentrated at its headquarters in  
 4 McLean, Virginia, and its officers direct, control, and coordinate its activities from this  
 5 office. Its members also meet at its headquarters in McLean, Virginia. (Id.)

6 29. Defendant Waldorf=Astoria Management LLC's sole member is Hilton  
 7 Domestic Operating Company, Inc. (Smith Decl., ¶ 5.) At all relevant times, Hilton  
 8 Domestic Operating Company Inc.'s headquarters, and thus its principal place of  
 9 business, has been in the Commonwealth of Virginia. (Id.) Hilton Domestic Operating  
 10 Company Inc. controls its operations from its McLean, Virginia, headquarters, located at  
 11 7930 Jones Branch Drive, McLean, Virginia, 22102. (Id.) Its main office and  
 12 management functions are concentrated at its headquarters in McLean, Virginia, and its  
 13 officers direct, control, and coordinate its activities from this office. (Id.)

14 30. Thus, Defendant Waldorf=Astoria Management LLC is a citizen of  
 15 Delaware and Virginia and Plaintiffs, citizen of California and Florida, are diverse from  
 16 Defendant Waldorf=Astoria Management, LLC.

17 **E. The Amount In Controversy Exceeds \$5,000,000 Based On A Plausible  
 18 Reading Of The Allegations Of The Complaint.<sup>2</sup>**

19 31. Plaintiffs do not allege any particular amount in controversy. Where a  
 20 plaintiff's state court complaint does not specify the particular amount of damages  
 21 claimed, the United States Supreme Court has held "a defendant's notice of removal need  
 22 only include a plausible allegation that the amount in controversy exceeds the  
 23 jurisdictional threshold," and the statement need not contain evidentiary submissions.

24 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553, 554 (2014).

25

---

26 <sup>2</sup> Defendant denies each and every allegation set forth by Plaintiffs in the Complaint and  
 27 denies that Plaintiffs or Putative Class Members are entitled to any compensatory or statutory  
 28 damages, injunctive relief, restitution, civil penalties, attorneys' fees, or any other relief.  
 Defendants also deny that this action can proceed as a class or representative action.  
 Notwithstanding the above, removal of this action is proper given that removal is based on the  
 allegations asserted in the Complaint.

1 Even if an evidentiary showing were required, Defendants need only show by a  
 2 preponderance of the evidence that the amount-in-controversy requirement has been  
 3 satisfied. *Id.* at 553-54; *see also Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373,  
 4 377 (9th Cir. 1997); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir.  
 5 1996).

6       32. Under CAFA, the claims of the individual members in a class action are  
 7 aggregated to determine if the amount in controversy exceeds the sum or value of  
 8 \$5,000,000. *See* 28 U.S.C. § 1332(d)(6). Congress intended federal jurisdiction to be  
 9 appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000  
 10 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and  
 11 regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory  
 12 relief).” Sen. Jud. Comm. Rep., S. REP. 109-14, at 42. Moreover, any doubts regarding  
 13 the maintenance of interstate class actions in state or federal court should be resolved in  
 14 favor of federal jurisdiction. S. Rep. 109-14, at 42-43 (“[I]f a federal court is uncertain  
 15 about whether ‘all matters in controversy’ in a purported class action ‘do not in the  
 16 aggregate exceed the sum or value of \$5,000,000, the court should err in favor of  
 17 exercising jurisdiction over the case ... Overall, new section 1332(d) is intended to  
 18 expand substantially federal court jurisdiction over class actions. Its provisions should be  
 19 read broadly ...”).

20       33. In determining whether the amount in controversy exceeds \$5,000,000, the  
 21 Court must presume Plaintiffs will prevail on each and every one of their claims.  
 22 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp. 993, 1001 (C.D.  
 23 Cal. 2002) (*citing Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (the  
 24 amount in controversy analysis presumes that “plaintiff prevails on liability”); *Angus v.  
 25 Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993) (“the amount in controversy is not measured  
 26 by the low end of an open-ended claim”)). Moreover, the argument and facts set forth  
 27 herein may appropriately be considered in determining whether the jurisdictional amount  
 28 in controversy is satisfied. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 843 n.1 (9th Cir. 2002)

1 (citing *Willingham v. Morgan*, 395 U.S. 402, 407 n.3 (1969)).

2 34. Notably, “[t]here is no obligation by defendant to support removal with  
 3 production of extensive business records to prove or disprove liability and/or damages with  
 4 respect to plaintiff or the putative class members at this premature (pre-certification) stage  
 5 of the litigation.” *Muniz v. Pilot Travel Ctrs. LLC*, 2007 U.S. Dist. LEXIS 31515, at \*15  
 6 (E.D. Cal. Apr. 30, 2007). Rather, a defendant seeking removal must prove by a  
 7 preponderance of the evidence that the aggregate amount in controversy exceeds the  
 8 jurisdictional minimum. *Rodriguez v. AT&T Mobility Servs. Ltd. Liab. Co.*, 728 F.3d 975,  
 9 977 (9th Cir. 2013) (“the proper burden of proof imposed upon a defendant to establish the  
 10 amount in controversy is the preponderance of the evidence standard”); *see Lewis v.*  
 11 *Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“The amount in controversy is  
 12 simply an estimate of the total amount in dispute, not a prospective assessment of  
 13 defendant’s liability.”); *Arias v. Residence Inn*, 936 F.3d 920, 922, 925 (9th Cir. 2019) (the  
 14 removing defendant may rely on reasonable assumptions in estimating the amount in  
 15 controversy, which “need not be proven”).

16 35. In *Dart Cherokee Basin Operating Co., LLC v. Owens*, the United States  
 17 Supreme Court held that, whereas here, the complaint is silent as to whether the amount in  
 18 controversy meets CAFA’s jurisdictional threshold of \$5,000,000 “a defendant’s notice of  
 19 removal need include only a *plausible* allegation that the amount in controversy exceeds  
 20 the jurisdictional threshold.” 135 S. Ct. 547, 554 (2014) (emphasis added). Following  
 21 *Dart*, the Ninth Circuit confirmed “a removing defendant’s notice of removal need not  
 22 contain evidentiary submissions but only plausible allegations of the jurisdictional  
 23 elements,” and further that “when a defendant’s allegations of removal jurisdiction are  
 24 challenged, the defendant’s showing on the amount in controversy may rely on reasonable  
 25 assumptions.” *Salter v. Quality Carriers, Inc.*, 2020 U.S. App. LEXIS 28364, \*6-7 (9th  
 26 Cir. Sept. 8, 2020) (citations and internal quotation marks omitted). Further, “[n]o  
 27 “antiremoval presumption attends cases invoking CAFA” because ‘Congress enacted  
 28 [CAFA] to facilitate adjudication of certain class actions in federal court.’” *Adams v. Toys*

1 'R' US – *Delaware, Inc.*, 2015 U.S. Dist. LEXIS 11338, at \*5-6 (N.D. Cal. Jan. 29, 2015)  
 2 quoting *Dart*, 135 S. Ct. at 554. On the contrary, courts are required to interpret CAFA's  
 3 provisions broadly in favor of removal. *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178,  
 4 1183-84 (9th Cir. 2015).

5       36. Moreover, if a plaintiff asserts statutory violations, the court must assume that  
 6 the violation rate is 100% unless the plaintiff specifically alleges otherwise. *See Muniz v.*  
 7 *Pilot Travel Ctrs. LLC*, 2007 U.S. Dist. LEXIS 31515, at \*12-13 (E.D. Cal. Apr. 30, 2007)  
 8 ("As these allegations reveal, plaintiff includes no fact-specific allegations that would result  
 9 in a putative class or violation rate that is discernibly smaller than 100%, used by defendant  
 10 in its calculations. Plaintiff is the 'master of [her] claim[s],' and if she wanted to avoid  
 11 removal, she could have alleged facts specific to her claims which would narrow the scope  
 12 of the putative class or the damages sought.") (*citing Caterpillar, Inc. v. Williams*, 482 U.S.  
 13 386, 392 (1987)); *see also Arreola v. The Finish Line*, No. 14-CV-03339-LHK, 2014 WL  
 14 6982571, at \*4 (N.D. Cal. Dec. 9, 2014) ("District courts in the Ninth Circuit have permitted  
 15 a defendant removing an action under CAFA to make assumptions when calculating the  
 16 amount in controversy—such as assuming a 100 percent violation rate, or assuming that  
 17 each member of the class will have experienced some type of violation—when those  
 18 assumptions are reasonable in light of the allegations in the complaint."); *Coleman v. Estes*  
 19 *Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1149 (C.D. Cal. 2010) ("[C]ourts have assumed a  
 20 100% violation rate in calculating the amount in controversy when the complaint does not  
 21 allege a more precise calculation.").

22       37. The amount in controversy may include general and special compensatory  
 23 damages and attorneys' fees that are recoverable by statute, such as the provisions of the  
 24 California Labor Code at issue in this case. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,  
 25 1155-1156 (9th Cir. 1998); *Goldberg v. C.P.C. International, Inc.*, 678 F.2d 1365, 1367  
 26 (9th Cir. 1982) (attorney's fees may be taken into account to determine jurisdictional  
 27 amount); *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) ("It  
 28 is settled that the statutory penalty and a statutory attorney's fees can be considered in

1 determining whether the jurisdictional amount is met”).

2       38. A removing defendant is “not required to comb through its records to  
 3 identify and calculate the exact frequency of violations.” *Oda v. Gucci America, Inc.*,  
 4 No. 2:14-cv-7468-SVW (JPRx), 2015 U.S. Dist. LEXIS 1672, at \*12 (C.D. Cal. Jan. 7,  
 5 2015); *see Sanchez v. Russell Sigler, Inc.*, No. CV 15-01350-AB (PLAx), 2015 U.S. Dist.  
 6 U.S. LEXIS 55667, at \*5 (C.D. Cal. Apr. 28, 2015). (“[A] removing defendant is not  
 7 obligated to research, state and prove the plaintiff’s claims for damages.”) (citation  
 8 omitted). *See also LaCross v. Knight Transport. Inc.*, 775 F.3d 1200, 1203 (9th Cir.  
 9 2015) (rejecting plaintiff’s argument for remand based on the contention that the class  
 10 may not be able to prove all amounts claimed: “Plaintiffs are conflating the amount in  
 11 controversy with the amount of damages ultimately recoverable”); *Ibarra v. Manheim*  
 12 *Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (in alleging the amount in  
 13 controversy, defendants “are not stipulating to damages suffered, but only estimating the  
 14 damages in controversy”). The ultimate inquiry is what amount is put “in controversy”  
 15 by Plaintiffs’ Complaint, not what defendants will actually owe. *LaCross*, 775 F.3d at  
 16 1202 (explaining that courts are directed “to first look to the complaint in determining the  
 17 amount in controversy”) (citation omitted).

18       39. Defendant denies that it engaged in any Labor Code violations. But, because  
 19 a plaintiff’s allegations are treated as true for purposes of determining the amount in  
 20 controversy, Defendant is able to provide approximate damage calculations—based on a  
 21 reasonable, theoretical percentage of violations—for purposes of demonstrating the  
 22 claims at issue satisfy the minimum damages threshold required for original jurisdiction  
 23 under CAFA. Courts routinely find that such theoretical projections are “reasonable” in  
 24 the face of allegations like Plaintiffs’ here. *See, e.g., Mendoza v. Savage Servs. Corp.*,  
 25 2019 WL 1260629, at \*2 (C.D. Cal. Mar. 19, 2019) (noting that courts “routinely apply a  
 26 20% violation rate . . . for meal and rest period premiums”); *Baker v. Propak Logistics,*  
 27 *Inc.*, 2019 WL 4168998, at \*5 (C.D. Cal. Sept. 3, 2019) (finding assumptions of a 40%  
 28 meal break violation rate and 20% rest break violation rate reasonable because “an

1 allegation of ‘pattern and practice’ of violations . . . impl[ies] that violations occurred  
 2 routinely and frequently, and not occasionally or sporadically”); *Bryant v. NCR Corp.*,  
 3 284 F. Supp. 3d 1147, 1151 (S.D. Cal. 2018) (finding assumption of a 60% violation rate  
 4 reasonable where plaintiff alleged that defendant had a “policy and practice of meal and  
 5 rest period violations”); *Torrez v. Freedom Mortg. Corp.*, 2017 WL 2713400, at \*4 (C.D.  
 6 Cal. June 22, 2017) (finding assumption of a 40% violation rate reasonable).

7 40. Here, as detailed below, Defendant has both plausibly alleged and  
 8 established by a preponderance of the evidence that the amount in controversy exceeds  
 9 \$5,000,000 and the Court has jurisdiction pursuant to CAFA. Plaintiffs’ claims place an  
 10 aggregate amount in controversy exceeding \$5,000,000 as follows:

11 a. At the Waldorf Astoria Beverly Hills where Plaintiffs worked,  
 12 Waldorf=Astoria Management LLC has employed at least approximately **786** non-  
 13 exempt employees between May 19, 2019 and September 15, 2023 (the “WABH  
 14 Employees”). (Nissen Decl., ¶ 6.) Approximately **313** of the WABH Employees  
 15 separated their employment during the time period of May 19, 2020 to September 15,  
 16 2023. (*Id.* at ¶ 7.)

17 b. The majority of the WABH Employees are full time employees who  
 18 typically work eight hours per day, five days per week. (*Id.* at ¶ 8.)

19 c. The hourly rate of pay of the WABH Employees who have been employed  
 20 by Defendant in the past year (December 2022 to December 2023) ranges from \$15.00  
 21 per hour to approximately \$51.20 per hour, with the current average hourly rate of pay  
 22 being \$24.71. (*Id.* at ¶ 9.)

23 d. Approximately **270,981** shifts were worked by the WABH Employees  
 24 between May 19, 2019 and September 15, 2023. (*Id.* at ¶ 10.)

25 41. **Minimum Wage.** Plaintiff’s second cause of action alleges that Defendant  
 26 failed to pay Plaintiffs and the Putative Class Members minimum wages. (Compl.  
 27 ¶¶ 124–133). California Labor Code § 1194 provides that any employee who receives  
 28 less than the legal minimum wage applicable to the employee is entitled to recover the

1 unpaid balance of the full amount of the minim wage. Cal. Lab. Code § 1194.  
 2 Conservatively estimating that Plaintiffs will attempt to recover one (1) hour of unpaid  
 3 non-overtime work applicable for every five (5) shifts worked, and conservatively  
 4 assuming that the WABH Employees were earning only \$15.50 per hour<sup>3</sup>, this claim  
 5 alone places in controversy at least **\$840,041.10** (\$15.50 x 1 hour x (.20 x 270,981  
 6 shifts))<sup>4</sup>.

7       42. **Overtime.** Plaintiffs' second cause of action also alleges that Defendant failed  
 8 to compensate Plaintiffs and the Putative Class Members for all overtime hours worked.  
 9 (Compl. ¶¶ 76, 80-82, 124–133). Under Labor Code section 510, overtime work must be  
 10 compensated at one and one-half times the regular rate of pay for an employee.  
 11 Conservatively estimating that Plaintiffs will attempt to recover one (1) hour of overtime  
 12 wages for every five shifts worked (roughly one hour per week) for themselves and the  
 13 Putative Class Members, and conservatively assuming that the WABH Employees were  
 14 earning only \$15.50 per hour, this claim alone places in controversy at least  
 15 **\$1,260,061.65** (\$15.50 x 1.5<sup>5</sup> x 1 hour x (.20 x 270,981 shifts)).

16       43. **Waiting Time Penalties.** Plaintiffs' third cause of action alleges that  
 17 Defendant failed to pay Plaintiffs and the Putative Class Members who are no longer  
 18 employed by Defendant all wages due upon termination as required by California Labor  
 19 Code sections 201 and 202. (Compl. ¶¶ 134–141.) California Labor Code § 203 provides  
 20 that if an employer willfully fails to pay any wages of an employee who is discharged or  
 21 who quits, the wages of the employee shall continue as a penalty from the due date  
 22 thereof at the same rate until paid or until an action therefore is commenced, up to a  
 23 maximum of thirty (30) days. Cal. Lab. Code § 203. Given the number of WABH

24  
 25       <sup>3</sup> California state minimum wage in 2023 was \$15.50.

26       <sup>4</sup> This does not account for liquidated damages (“double damages”) that Plaintiffs seek to  
 27 recover pursuant to Labor Code section 1194.2. (Compl., ¶ 132.)

28       <sup>5</sup> For convenience and ease of calculation, Defendant is assuming that the hourly  
 overtime rate is 1.5 times \$15.50. Defendant denies it failed to compensate Plaintiffs and  
 the Putative Class Members for all overtime hours worked at 1.5 times the “regular rate  
 of pay” pursuant to Labor Code Section 510.

1 Employees whose employment terminated during the time period of May 19, 2020 to  
 2 September 15, 2023, and conservatively assuming that the WABH Employees were  
 3 earning only \$15.50 per hour, this claim places in controversy at least **\$1,164,360.00** (8  
 4 hours/day x \$15.50/hour x 30 days x 313).

5       **44. Meal Periods.** Plaintiffs' fourth cause of action alleges that Defendant failed  
 6 to provide Plaintiffs and the Putative Class Members with legally complaint meal periods.  
 7 (Compl. ¶¶ 85, 142–47.) California Labor Code § 226.7 provides that employees are  
 8 entitled to one additional hour of pay at the employee's regular rate of compensation for  
 9 each workday that a legally complaint meal period was not timely provided. Cal. Lab.  
 10 Code § 226.7. Conservatively estimating that Plaintiffs will attempt to show that  
 11 Plaintiffs and the Putative Class Members were not provided one (1) compliant meal  
 12 period for every five (5) shifts worked, and conservatively assuming that the WABH  
 13 Employees were earning only \$15.50 per hour, this claim places in controversy at least  
 14 **\$840,041.10** (1 x (.20 x 270,981) x \$15.50)<sup>6</sup>.

15       **45. Rest Breaks.** Plaintiffs' fourth cause of action also alleges that Defendant  
 16 failed to provide Plaintiffs and the Putative Class Members with legally compliant rest  
 17 breaks. (Compl. ¶¶ 85, 142–47.) Under Labor Code section 226.7, an employee is entitled  
 18 to one hour of pay for each workday in which a compliant rest break is not provided.  
 19 California Labor Code § 226.7 provides that employees are entitled to one additional  
 20 hour of pay at the employee's regular rate of compensation for each workday that a rest  
 21 break was not provided. Cal. Lab. Code § 226.7. Conservatively estimating that Plaintiffs  
 22 will attempt to show that Plaintiffs and the Putative Class Members were not provided  
 23 one (1) compliant rest period for every five (5) shifts worked, and conservatively  
 24 assuming that the WABH Employees were earning only \$15.50 per hour, this claim  
 25 places in controversy at least **\$840,041.10** (1 x (.20 x 270,981) x \$15.50).

26  
 27       

---

<sup>6</sup> For convenience and ease of calculation, Defendant is assuming that meal and rest  
 28 break premiums are paid at a rate of \$15.50. Defendant denies that it failed to properly  
 pay meal and rest break premiums to Plaintiff and the Putative Class Members at the  
 "regular rate of pay" pursuant to Labor Code section 226.7.

1       46. **Wage Statement Penalties.** Plaintiffs' sixth cause of action alleges that  
 2 Defendant knowingly and intentionally failed to provide Plaintiffs and the Putative Class  
 3 Members with accurate wage statements. (Compl. ¶¶ 78, 83, 165–73.) California Labor  
 4 Code § 226 provides that employees may recover actual damages or \$50 for the initial  
 5 pay period in which a violation occurs, and \$100 for subsequent pay periods, not to  
 6 exceed \$4,000. Cal. Lab. Code § 226. The WABH Employees have been paid on either a  
 7 bi-weekly basis or semi-monthly basis throughout the period from May 19, 2019 to  
 8 September 15, 2023. (Nissen Decl., ¶ 11.) Assuming that each of the approximately 786  
 9 WABH Employees received ten (10) noncompliant wage statements during the  
 10 applicable timeframe, for a total of \$950 per employee (one \$50.00 penalty for the first  
 11 violation plus nine \$100 penalties for subsequent violations), for all 786 putative class  
 12 members, this claim places in controversy at least **\$746,700.00** (\$950 x 786).

13       47. Accordingly, the amount placed in controversy by Plaintiffs' Complaint  
 14 **conservatively** exceeds **\$5,691,244.95**. This does not include the damages that are  
 15 potentially recoverable from other claims that Plaintiffs are asserting on behalf of  
 16 themselves and the Putative Class Members, including but not limited to: (1) willful  
 17 misclassification (Compl. ¶¶ 106-123); (2) failure to provide paid sick leave (Compl.  
 18 ¶¶ 148-164); (3) retaliation in violation of Labor Code §§ 96, 98.6, 98.7, 232.5(a), and  
 19 1102.5 (Compl. ¶¶ 187-199); (4) failure to indemnify and reimburse for employment  
 20 related expenses in violation of Labor Code § 2802 (Compl. ¶¶ 205-213); (5) unlawful  
 21 tip-sharing and confiscation of gratuities (Compl. ¶¶ 223-229); (6) unfair business  
 22 practices in violation of Business & Professions Code §§ 17200, *et seq.* (Compl. ¶¶ 241-  
 23 251). This amount is also based on the amount in controversy from May 19, 2019  
 24 through September 15, 2023 only and could also be considerably greater if one were to  
 25 assume a higher violation rate and a higher rate of pay earned by the Putative Class  
 26 Members.

27       48. Importantly, the above estimates of the amount in controversy reach the  
 28 jurisdictional threshold without including the unspecified amount of attorneys' fees that

1 Plaintiffs seek. (Compl. ¶¶ 122, 133, 147, 161, 173, 185, 233, Prayer for Relief). In  
 2 determining whether a complaint meets the amount in controversy threshold for a  
 3 removal under 28 U.S.C. § 1332, a court may also consider the value of claims for  
 4 attorney's fees. *See Goldberg v. CPC Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982)  
 5 (attorney's fees may be taken into account to determine jurisdictional amount); *see also*  
 6 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) (holding the  
 7 amount in controversy may include attorney's fees recoverable by statute). Attorneys'  
 8 fee awards in California wage-hour class actions can easily total several hundred thousands  
 9 of dollars or more. *See, e.g., McGuigan v. City of San Diego*, 183 Cal. App. 4th 610, 638  
 10 (2010) (noting attorneys' fees paid in settlement of \$1.6 million); *Pellegrino v. Robert Half*  
 11 *Int'l, Inc.*, 182 Cal. App. 4th 278, 287, 296 (2010) (affirming \$558,926.85 in attorneys'  
 12 fees in exemption misclassification class case, but reversing as to multiplier); *Vasquez v.*  
 13 *California*, 45 Cal. 4th 243, 249 (2008) (noting award of \$435,000 in attorneys' fees for  
 14 class claims involving failure to pay wages, liquidated damages, penalties and waiting time  
 15 penalties). Moreover, the Ninth Circuit recently concluded "that the amount in controversy  
 16 is not limited to damages incurred prior to removal—for example, it is not limited to wages  
 17 a plaintiff-employee would have earned before removal (as opposed to after removal).  
 18 Rather, the amount in controversy is determined by the complaint operative at the time of  
 19 removal and encompasses all relief a court may grant on that complaint if the plaintiff is  
 20 victorious." *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018).

21       49. "Courts in this circuit have held that, for purposes of calculating the amount  
 22 in controversy in a wage-and-hour class action, removing defendants can reasonably  
 23 assume that plaintiffs are entitled to attorney fees valued at approximately twenty-five  
 24 percent of the projected damages." *Fong v. Regis Corp.*, No. C 13-04497 RS, 2014 U.S.  
 25 Dist. LEXIS 275, at \*23 (N.D. Cal. Jan. 2, 2014); *see also Herrera v. Carmax Auto*  
 26 *Superstores Cal., LLC*, No. EDCV-14-776-MWF (VBKx), 2014 U.S. Dist. LEXIS  
 27 188729, at \*12 (C.D. Cal. June 12, 2014) ("Substantial authority supports a 'benchmark'  
 28 25 percent attorneys' fees figure to be added to any claim for which attorneys' fees are

available.”); *Hamilton v. Wal-Mart Stores, Inc.*, No. ED CV 17-01415-AB (KKx), 2017 U.S. Dist. LEXIS 162856, at \*16 (C.D. Cal. Sep. 29, 2017) (“The Ninth Circuit has allowed an estimate fee award of 25% of a plaintiff’s damages in calculating the amount in controversy under CAFA.”); *Gutierrez v. Stericycle, Inc.*, No. LA CV15-08187 JAK (JEMx), 2017 U.S. Dist. LEXIS 20975, at \*51 (C.D. Cal. Feb. 14, 2017) (“it is appropriate to include in the calculation of the amount in controversy a potential fee award of 25% of the value of certain of the substantive claims.”).

50. For the foregoing reasons, and without conceding or admitting to the underlying merit of Plaintiffs' claims, the amount in controversy easily surpasses the \$5,000,000 jurisdictional threshold required under CAFA.

## **NOTICE TO ALL PARTIES AND STATE COURT**

51. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies that a copy of this Notice of Removal and all supporting papers will be served promptly on Plaintiffs' counsel and filed with the Clerk of the Los Angeles County Superior Court. Therefore, all procedural requirements under 28 U.S.C. § 1446 will be followed and satisfied.

## CONCLUSION

Based on the foregoing, Defendant hereby removes the above-captioned action from the Los Angeles County Superior Court to this Court based on CAFA requirements (28 U.S.C. §§ 1332(d), 1441, 1446 and 1453), and respectfully requests that this Court retain jurisdiction for all further proceedings.

Dated: January 5, 2024

## JACKSON LEWIS P.C.

By: /s/ Connie L. Chen  
Connie L. Chen

Attorneys for Defendant  
WALDORF-ASTORIA MANAGEMENT  
LLC